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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,922	05/09/2003	Gayle Eysenring Jenkins	5147.21	6247
1321	7590	09/20/2005	EXAMINER	
LAVALLE D. PTAK LAW OFFICE OF LAVALLE PTAK 28435 N 42ND STREET SUITE B CAVE CREEK, AZ 85331			LARSON, JUSTIN MATTHEW	
			ART UNIT	PAPER NUMBER
			3727	
DATE MAILED: 09/20/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/713,922

Applicant(s)

JENKINS, GAYLE EYSENING

Examiner

Justin M. Larson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 May 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because the reference numerals are unclear. The labels "adjustment clip", "locking clip", "quick release clip", "combination of elastic strap or web", "front", and "side" should not be included in the figures. Applicant should identify these labels when discussing the corresponding reference numerals in the specification.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

**35 USC § 112, paragraph 6**

2. Claims 9 and 10 are written in "means plus function" form and since they meet the analysis set forth in MPEP 2181, the Examiner assumes that applicant wishes to invoke 35 USC § 112, paragraph 6.

**Claim Rejections - 35 USC § 102**

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 10, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Marsh, Jr. (5,505,353). Marsh, Jr. discloses a bottle harness assembly including in combination: a bottle holding member (figure 6) for holding a bottle (54) in an upright position including a bottom for supporting a bottle, and having an open top (112) for facilitating the removable insertion of a bottle therein; and an elongated flexible band (94) attached to the bottle holding member for holding a bottle placed therein in an upright position when the bottle holding member is suspended by the flexible band; further including means (96) for adjusting the effective length of the flexible band.

5. Claims 1, 2, 3, 4, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by LeDune (5,174,481). LeDune discloses a carrier harness assembly including in combination: a holding member (figure 2) for holding an object (16) in an upright position including a bottom for supporting the object, and having an open top for facilitating the removable insertion of the object therein; and an elongated flexible band

(12) attached to the object holding member for holding an object placed therein in an upright position when the object holding member is suspended by the flexible band; wherein the flexible band has first and second ends, with the first end thereof attached to the object holding member and the second end thereof having a loop (14) therein for attachment to an object; wherein the loop in the flexible band is a releasable loop (col. 2 lines 28-30), releasably connected to the flexible band by connecting the quick release fastener (VELCRO) to the flexible band; wherein the object holding member is made of a flexible web material (col. 1 lines 50-53).

The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by LeDune which is capable of being used in the intended manner, i.e., to suspend a bottle from a support structure. There is no structure in LeDune that would prohibit such functional intended use (see MPEP 2111).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4, 5, 6, 10, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeDune in view of Lindsey (6,260,748). LeDune discloses the claimed invention but uses a quick release VELCRO fastener instead of the clips that applicant has disclosed. LeDune also fails to disclose the elongated flexible band

having an adjustable length and a means for such an adjustment. Lindsey, however, teaches a sling that utilizes a pair of loops for connecting to objects. One such loop is formed by folding flexible band (6) back onto itself and connecting quick release clip (5) at the end of the flexible band to locking clip (4), which is attached to the flexible band a certain distance from quick release clip (5). Structurally, the location of clips (4&5) correspond to applicant's clips (18&30), as locking clip (18) is at the end of applicant's flexible band (12) and quick release clip (30) is attached to the flexible band a certain distance from quick release clip (30), where flexible band (12) is folded onto itself to form the loop by connecting clips (18&30). While the locations of Lindsey's quick release and locking clips are reversed from that disclosed by applicant, Official Notice is taken to the fact that the locations of these clips along the flexible band are interchangeable as the clips still perform their function just as before. Lindsey also teaches an adjustment clip (8) for adjusting length located along the flexible band between the quick release and locking clips, just as applicant's locking clip (28) is mounted between the quick release and locking clips. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the carrier harness of LeDune by using an art equivalent means for forming the adjustable loop at the end of the flexible band, such as that taught by Lindsey, and also to include an adjustment clip between the quick release and locking clips, also as taught by Lindsey, in order to form a quickly-releasable loop to suspend the bottle carrier from and to allow the length of the flexible band to be adjusted.

Regarding the limitation set forth in claim 6, "web" is defined as being a woven fabric or the structural part of cloth. Because LeDune discloses cloth webs and straps, Examiner considers the webs and straps to be made of a web material, satisfying this limitation. Examiner also considers this "web" limitation to be met in any other claims rejected in this application where the "web" material is not specifically mentioned in the rejection.

8. Claims 7, 12, and 15 rejected under 35 U.S.C. 103(a) as being unpatentable over LeDune in view of Lindsey, and further in view of Brochu (4,062,510). LeDune in view of Lindsey discloses the claimed invention except for the bottle holding member being made of an elastic material. Brochu, however, teaches a bottle holder that, like LeDune, uses both vertical and horizontal straps to secure the bottle, each of the straps being elastic (claim 2). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the vertically supporting straps of LeDune elastic, as taught by Brochu, especially considering that LeDune's horizontally supporting straps (31) are already disclosed as being elastic.

9. Claims 8, 9, 13, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeDune, Lindsey, and Brochu as applied in paragraph 8 above in view of McCook (3,184,883). LeDune, Lindsey, and Brochu as applied in paragraph 8 above disclose the claimed invention except for the flexible band being made of an elastic material. McCook, however, discloses a harness that suspends baby toys from a support structure where the toys are supported by carrying means (22) on flexible bands or tethers (19) which are in turn attached to a support structure (11) by loops

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(20). McCook teaches that it is old and well known in the art to make the tethers or flexible bands that connect a child's object to a support structure out of an elastic material so that the child gains exercise in stretching the elastic and is also entertained (col.1 lines 20-30). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the flexible band of LeDune, Lindsey, and Brochu as applied in paragraph 8 above out of elastic, as taught by Brochu, in order to provide a baby with exercise and entertainment while the pulled and drank out of their bottle.

Regarding the limitation set forth in claim 9, the adjustment clip of LeDune in view of Lindsey serves to also adjust the size of the loop formed at the top of the flexible band, thus satisfying this limitation.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited art teaches related carriers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on M-Th 7-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**Stephen K. Cronin**  
Primary Examiner